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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 EUGENE ORANGE,

12 Plaintiff,

13 vs.

14 A. HEDGEPEETH, Warden,

15 Defendant.

CASE NO. 07cv2066 JLS (WMc)

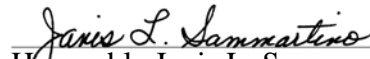
**ORDER: DECLINING ISSUANCE
OF CERTIFICATE OF
APPEALABILITY**

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17 A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district
18 court's denial of his petition, and an appeal is only allowed in certain circumstances. Miller-El v.
19 Cockrell, 537 U.S. 322, 327-28 (2003). A certificate of appealability is authorized "if the
20 applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. §
21 2253(c)(2). To meet this standard, a petitioner must show that "jurists of reason could disagree
22 with the district court's resolution of his constitutional claims or that jurists could conclude the
23 issues presented are adequate to deserve encouragement to proceed further." Miller-El v.
24 Cockrell, 537 U.S. 322, 327 (2003). While the petitioner is not required to prove the merits of his
25 case, he must demonstrate "something more than the absence of frivolity or the existence of mere good
26 faith on his or her part." Id. at 338 (internal quotations and citations omitted).
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1 In the present case, the Court dismissed the petition as duplicative because it was identical to
2 a petition he previously filed in case number 07cv0749. The Court finds that reasonable jurists would
3 not find the Court's determination that Petitioner is not entitled to federal habeas corpus relief in this
4 case debatable, wrong, or deserving of encouragement to proceed further. Petitioner has not made the
5 required substantial showing of the denial of a constitutional right. Accordingly, the Court hereby
6 **DECLINES** to issue a certificate of appealability.

7 **IT IS SO ORDERED.**

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9 DATED: March 19, 2008

10 
11 Honorable Janis L. Sammartino
12 United States District Judge
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